

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.1163/2006
(Mahesh Inani Vs. State)

Date of order : May 31st, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Pradeep Shah }
Mr. R.K. Charan }
Mr. V.K. Mathur }, for the petitioner.
Mr. S.K. Vyas, Government Advocate.
Mr. Sandeep Mehta, for complainant.

By way of filing the present revision petition, the petitioner has challenged the order dated 4.12.2006 passed by Special Judge cum Sessions Judge (Prevention of Corruption Act) Cases, Udaipur in special Sessions Case No.7/2004 whereby the trial court has framed charges for offence under Sections 13 (2) and 13 (1) (d) of Prevention of Corruption Act, 1988 and Section 120-B I.P.C. against the petitioner – Mahesh Chandra Inani, Chairman, Municipal Council, Chittorgarh and Ghanshyam, Prem Singh and Mohan Lal including certain other persons.

The main ground of the learned counsel for the petitioner is that no offence is made out against the petitioner from the record of the case, therefore, the petitioner is entitled to be discharged from the charges levelled against him.

According to the facts of the case, in the year 1998, the Municipal Council, Chittorgarh resolved to allot a small piece of land to the persons belonging to lower income group by regularizing their possession over the land and for the said purpose, Camps were organized and in view of the resolution small pieces of land were allotted to many persons. Complaints were made in this regard to the Anti-Corruption Bureau that in the grab of the resolution, the said plots were allotted for commercial purposes to the land mafias and ineligible persons at a meagre cost whereas the plots were to be regularized to the possession of lower income group persons. According to the allegation, while exercising the power, the petitioner made allotment in favour of many other persons other than the persons who were not belonging to the Below Poverty Line persons. According to the allegation, the plots were allotted for commercial purposes and so also to those persons who were not even eligible and were not falling under the category of BPL.

Upon this FIR, the investigation was

commenced and after usual investigation, challan was filed and according to the conclusion of the investigation, the allegation was levelled against the petitioner and other co-accused persons that due to illegality committed by them, the Municipal Council, Chittorgarh has suffered a loss of Rs.43,37,100/- due to the criminal conspiracy of the petitioner and other co-accused persons. After filing challan, the charges were framed against the petitioner.

It is vehemently contended by the learned counsel for the petitioner that no offence is made out against the petitioner in view of the fact that as and when the mistake was come to the knowledge, a resolution was passed by the Municipal Council, Chittorgarh in a meeting, which was convened under the Chairmanship of the petitioners, the members of the Board resolved to cancel all the allotments made in favour of the persons who were not eligible for such allotment and after taking such decision, some allotments were cancelled and in cases where the registration of the documents was effected, civil suits were preferred for cancellation of the sale deed before the civil court and in some of the cases, the allotments made by the Municipal Council wherein the registrations were made were cancelled. Hence, the question of involvement in committing any crime by illegal means by the petitioner or any other persons does not arise. It is argued by the learned counsel

for the petitioner that if any mistake was committed, it was rectified by way of passing resolution and taking decision to challenge the said allotments by way of filing suit and in some of the suit, the decree has been passed for cancellation of the allotment and in some of the cases, adverse orders were passed against the Municipal Council but that does not mean that any criminal liability can be imposed against the petitioner because the petitioner has acted bonafidely and being the Chairman of the Municipal Council, he has made his all efforts to make proper allotment and if any allotment was made in contravention of the Scheme of resolution, then, appropriate action was taken and a resolution was passed by the Municipal Council to file Civil Suit for cancellation of such allotments. Therefore, the charges levelled against the petitioner are not established prima facie and the learned trial court has committed an error while framing charges against the petitioner vide impugned order dated 4.12.2006

On the other hand, learned Public Prosecutor as well as learned counsel for the complainant vehemently argued that the present revision petition was filed on 19.12.2006 against framing of charges. However, in this case, four writ petitions were filed before this Court by co-accused persons against the suspension orders passed against them. Those writ petitions were registered as SB Civil Writ Petitions

Nos.2146/2002, 2147/2002, 2148/2002 and 2089/2002. In the aforesaid writ petitions, when the fact of filing challan was brought to the notice of the Court, those writ petitions were decided vide order dated 19.4.2004 and the learned Single Judge of this Court has observed as follows :

“I have gone through the writ petitions, the impugned orders, and the judgment in Mohan Lal Menaria's case. In my view Mohan Lal Menaria's case squarely covers the controversy by various principles propounded, and guidelines given therein. These writ petitions are, therefore, dismissed. However, following the directions given in Dr. Mohanlal Menaria's case, it is directed that the criminal court being the Court of Special Judge, Anti Corruption Cases, Udaipur where the challan is said to have been filed on 11.12.2003 is directed to proceed with the trial most expeditiously, and to complete it preferably within a period of one year.”

Thereafter, a criminal misc. petition being SB Criminal Misc. Petition No.266/2006 was filed before this Court by the complainant with the prayer that the learned trial court is unnecessarily delaying the trial though this Court has passed orders in various writ petitions for completing the trial most expeditiously within a period of one year. In the aforesaid misc. petition, this Court has passed an order to expedite the trial and in pursuance of that order, charges were framed by the trial court.

Learned counsel for the complainant has

invited the attention of this Court that in this case, it is not disputed by the petitioner that wrong allotments were made. It is also not disputed by the petitioner that, thereafter, resolution was passed to file civil suit for cancellation of those allotment. Meaning thereby, it is admitted by the petitioner and other officials of the Municipal Council, Chittorgarh that illegally allotments were made to the persons of upper class of the society whereas the scheme was framed to allot the plots to the category of BPL. Most of the plots were allotted to the persons belonging to upper class category and relatives of petitioner and other officials of Municipal Council, ignoring the claim of BPL persons and the illegality was committed upto the level of registration of documents for the allotted plots. Therefore, it is obvious from the conduct of the petitioner and other co-accused persons that they were involved in the allotment of the land in contravention of the scheme framed by the Municipal Council, Chittorgarh. In the investigation conducted by the Police, there is material on record that due to criminal conspiracy of the petitioner and other co-accused persons, the allotments were made even to the relatives of the petitioners as well as other co-accused persons. Therefore, it cannot be said that allotments were wrongly made to the persons who were not belonging to BPL category, meaning thereby, the allotments were made to the persons who were relatives of Chairman and

as well as other members of the Municipal Council. It is also argued that in some of the suit filed by the Municipal Council as per the resolution, the allottees did not contest the case and decrees were passed by the Civil Court, meaning thereby, it was well within the knowledge of the allottees that the allotments have been made illegally, therefore, they did not contest the case in some of the cases, the civil suit filed by the Municipal Council was dismissed.

Learned Public Prosecutor as well as learned counsel for the complainant has contended that there is evidence on record upon which the charges were framed against the petitioner and there are orders passed by this Court for completing the trial. Therefore, in these circumstances, there is no question to interfere with the impugned order for framing charge while exercising the revisional jurisdiction by this Court.

I have considered the rival submissions made by the learned counsel for the parties and gone through the impugned order as well as the record of the case.

In this case, it is admitted position that in four writ petitions as aforesaid filed by co-accused persons before this Court, challenging their suspension order, this Hon'ble Court while taking into

account the fact that challan has been filed and there is evidence on record, directed the trial court to complete the trial within a period of one year. Likewise, in other misc. petition, this Court has passed an order for compliance of the order passed in aforesaid writ petitions.

While perusing the record and considering all the aspects of the matter, in my opinion, there is prima facie case made out against the petitioner and other co-accused persons because the scheme was framed for allotting the plots to the persons belonging to BPL category but the allotments were made to the relatives of Chairman as well as other officials of the Municipal Council, Chittorgarh at very low price and thereafter, an attempt was made to rectify the said illegality. Whether the allotments were made bonafidely or not, it is the subject matter of trial. Therefore, at this stage, it cannot be said that the learned trial court has committed an error while framing charges against the petitioner and other co-accused persons.

Accordingly, I see no reasons to interfere with the order impugned dated 4.12.2006, framing charges against the petitioner as aforesaid. The revision petition is dismissed.

(GOPAL KRISHAN VYAS), J.